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No. 83-1242

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

SUN MYUNG MOON AND TAKERU KAMIYAMA, *Petitioners*,

v.

UNITED STATES OF AMERICA, *Respondent*.

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE CATHOLIC LEAGUE FOR RELIGIOUS AND CIVIL RIGHTS AS AMICUS CURIAE

IN SUPPORT OF REVERSAL

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Pursuant to Rule 36.1 of the Rules of this Court, the Catholic League for Religious and Civil Rights files this brief in support of the petition for certiorari. Consent for filing of this brief has been obtained in writing from the attorneys of record for the parties in this case. Their original letters are filed together with this brief.

INTEREST OF AMICUS CURIAE

The Catholic League for Religious and Civil Rights is a non-profit corporation, national in membership, organized to promote good will and harmonious relations in the community, to combat all forms of religious prejudice and discrimination and to defend the rights and sanctity of each human life. In contrast to Church officials or agencies who address social concerns largely in their role as teachers standing outside the secular realm and to other associations of Catholic citizens who undertake social action as a purpose secondary to their primary fraternal, charitable or spiritual ends, the League is an organization of Catholic citizens whose primary purpose is to protect the religious freedom rights and advance the just interests of Catholics within secular society. In furtherance of this primary purpose, the League has participated in many judicial matters in which religious liberty interests have been at stake. The League is concerned with the impact this case

has on the religious liberty of the petitioners and their followers and is very concerned with the impact this decision could have on other churches, most especially the Roman Catholic Church.

STATEMENT OF THE CASE

Amicus Curiae wishes to adopt, to the extent relevant, the Statement of the Case contained in the petition for certiorari.

Amicus Curiae further wishes to emphasize that the positions taken in this matter do not stem from any agreement with the theological premises of the religious movement led by petitioners. Indeed, our differences with Reverend Moon's theology are very significant. Rather, our concern is only with the unconstitutional treatment Reverend Moon has received and the potential deleterious effect the decision below could have on all churches, including the Roman Catholic Church.

SUMMARY OF ARGUMENT

The jury's decision below required the jury to determine whether certain property belonged to Reverend Moon or the Unification Church. In making this decision, the jury was permitted to render, at least impliedly, a determination that the property was not used for "religious purposes." This determination was made with few clear standards and was made neither in deference to the church's explanations concerning religious purpose nor clearly recognized neutral principles of law. Such an unguided jury determination on this issue runs afoul of the constitutional requirements that government avoid excessive entanglement with religion and respect religion's free exercise. The requirement that courts avoid doctrinal determinations, either through deference to the church's explanations or the use of neutral principles of law, is applicable whether the government determination involved resolves an internal property dispute, decides whether a church is entitled to a tax exemption, or determines whether property is held for religious purposes in a federal tax criminal prosecution.

The constitutional infirmity just elucidated is one which could have an impact on religions other than the one involved in this matter. A specific example of a church which could be adversely

affected by this precedent is the Roman Catholic Church. Like Unification Church leaders, Catholic leaders, such as bishops, often hold church property in their own name. To be sure, the Catholic Church has a highly developed body of canon law applicable to property questions. Were a court to defer to this body of canon law, a Catholic bishop would not find himself liable for taxes in factual situations similar to this case. However, the largely unlimited jury inquiry into religious purposes licensed by the decision below gives no assurance that courts would treat a Catholic bishop in such a deferential manner. The possibility of such adverse effect indicates that the issues involved in this matter have implications extending far beyond the involved parties and require resolution by this Court.

REASONS FOR GRANTING THE PETITION

I.

THE JURY'S *AD HOC* SUBSTITUTION OF ITS VIEWS OF "RELIGIOUS PURPOSES" FOR THOSE OF A CHURCH IMPERMISSIBLY ENTANGLED GOVERNMENT IN RELIGION AND IMPAIRED FREE EXERCISE OF RELIGION.

In its decision below, the jury determined that certain property was owned personally by Reverend Moon rather than by the church he heads. In making this determination the jury, at least implicitly, determined that these assets were used for personal rather than religious purposes.[1] This determination was made with few clear standards, certainly was not in deference to the church's position,[2] and was not an application of any clearly recognized neutral principles of law.

Amicus asserts that this type of jury determination has the constitutionally impermissible effect of substituting the jury's views of a religious organization's purposes for those of the organization and its adherents. While the applicable constitutional analysis is spelled out more fully in the *amicus curiae* brief filed on behalf

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[1] *See* App. 25.

[2] *See id.*

of the Center for Judicial Studies by Prof. Charles E. Rice,[3] the basics of this analysis are outlined here.

Under *United States v. Ballard*, 322 U.S. 78, 86-87 (1944), a court is to avoid determinations considering the truth of a church's doctrinal positions, and may only inquire as to whether these doctrinal positions are adhered to in good faith by the church and its followers. The same constitutional policy of avoidance of judicial determination of questions of religious doctrine can be said to underlie this Court's resolution of internal disputes over church property such as *Jones v. Wolf*, 443 U.S. 595, 602-604 (1979), and *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-712 (1976), pursuant to the establishment clause's mandate that government avoid excessive entanglement with religion. These decisions require avoidance of the resolution of doctrinal issues either through deference to a church's internal decisions,[4] or the application of neutral principles of law capable of avoiding doctrinal issues.[5] In both of these decisions, it was not the fact of an internal property dispute which raised the specter of unconstitutional excessive entanglement, just as in the New York Court of Appeals' decision in *Holy Spirit Association [Unification Church] v. Tax Commission*, 55 N.Y.2d 512, 527-28 (1982), it was not the fact of a real property tax exemption issue which raised the question of contravention of the religion clauses. Rather, in all of these cases the preeminent danger sought to be avoided was constitutionally impermissible judicial resolution of questions of religious doctrine. Judicial determination of these doctrinal issues in a federal tax criminal prosecution is every bit as unconstitutional as determination of such doctrinal issues in internal property disputes or state real property tax exemption proceedings.

However, precisely such a constitutionally impermissible resolution of questions of religious doctrine was undertaken by the jury in this matter. This resolution was undertaken without any deference to the doctrinal views held in good faith by members

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[3] *Amicus* Catholic League for Religious and Civil Rights supports fully the analysis made by Prof. Rice.

[4] *See Serbian Eastern Orthodox Diocese v. Milovojevich*, 426 U.S. at 724-725.

[5] *See Jones v. Wolf*, 443 U.S. at 604.

of this church. Indeed, this determination was made with little consideration of these views. Further, the jury's determination was made without any clearly explicit guidance from the court concerning "neutral principles" capable of avoiding the resolution of doctrinal issues. Thus, the court of appeals' approval of such a free-wheeling jury determination impairs the religion clauses' important purpose of avoiding judicial determinations of religious doctrine and is constitutionally impermissible.

II.

PERMISSION OF SUCH CONSTITUTIONALLY IMPERMISSIBLE JURY DETERMINATIONS COULD ADVERSELY AFFECT OTHER CHURCHES, INCLUDING THE ROMAN CATHOLIC CHURCH.

When an action violative of the religion clauses adversely affects even a single individual, such action should be corrected. However, when the application of a precedent created by such an action could penalize religious groups other than those immediately involved, its correction becomes even more urgent. The licensing of basically unguided jury determinations concerning funds' religious purposes, created by the decision below, presents exactly the kind of constitutional violation which must be corrected because of its detrimental impact on other religious movements.

Amicus curiae is both most familiar and most concerned with the adverse impact this decision might have on the Roman Catholic Church. As was the case in the Unification Church, Catholic religious leaders, such as bishops, often hold church property in their own names.[6] This is consistent with the canon law premise that, "In all juridical transactions of the diocese, the diocesan Bishop acts in the person of the diocese." Canon 393, *The Code of Canon Law* (1983).

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[6] In these situations the bishop is often considered a "corporation sole." *See* Cauper and Ellis, "Religious Corporations and the Law," 71 Mich. L. Rev. 1499, 1523-24, 1536, 1540-41 (1973); P. Dignan, *A History of the Legal Incorporation of Catholic Church Property in the United States (1784-1932)* 267 (1935).

A Catholic bishop holding church property in his name potentially faces the same type of federal tax prosecution as befell Reverend Moon. However, a Catholic bishop could point to a highly developed body of canon law applicable to his situation. Specifically, the bishop could point to Canon 1267, section 1 of *The Code of Canon Law* (1983), which provides: "Unless the contrary is clear, offerings made to Superiors or administrators of any ecclesiastical juridical person, even a private one, are presumed to have been made to the juridical person itself." Further, he could point to Canon 1254 of *The Code of Canon Law* (1983), which provides:

> § 1. The Catholic Church has the inherent right independently of any secular power, to acquire, retain, administer and alienate temporal goods, in pursuit of its proper objectives.
>
> § 2. These proper objectives are principally the regulation of divine worship, the provision of fitting support for the clergy and other ministers, and the carrying out of works of the sacred apostolate and of charity, especially for the needy.

These canon law provisions make clear that the maintenance of priests, such as a bishop, is a religious purpose, and ought to place a Catholic bishop outside the scope of the type of federal tax prosecution involved in this case. But, under the decision below, what deference would a jury be required to give canon law? Would canon law be deferred to, or would the jury be permitted to make its own determination as to religious purpose without even giving consideration to canon law? Under the decision below, these questions could not be answered with any certainty. Thus, the constitutional infirmity involved in the jury's decision could adversely affect the Catholic Church, despite its highly developed canon law, in much the same way as it would even more certainly affect other churches which lack a developed canon law. The far-reaching potential effects of the jury's unconstitutional determination should, thus, lead this Court to grant the petition for certiorari.

CONCLUSION

For the foregoing reasons, the writ of certiorari should issue and the convictions of the petitioners should be reversed.

Respectfully submitted,

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